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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

CHAD BROOKS,

Defendant and Appellant.

F077107

(Super. Ct. No. BF168581A)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Kern County. John S. Somers, Judge.

Ross Thomas, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Lewis A. Martinez and Ian Whitney, Deputy Attorneys General, for Plaintiff and Respondent.

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* Before Franson, Acting P.J., Peña, J. and Smith, J.

INTRODUCTION

Appellant Chad Brooks was convicted of multiple offenses, including one count of violating Penal Code¹ section 368, subdivision (b)(1), elder abuse. It also was found true pursuant to section 12022.7, subdivision (c), that Brooks personally inflicted great bodily injury on the victim and the victim was over 70 years old. Brooks contends the evidence is insufficient to sustain the conviction for elder abuse. We disagree and affirm.

FACTUAL AND PROCEDURAL SUMMARY

Because Brooks challenges only the sufficiency of the evidence of the elder abuse conviction, we focus our recitation of facts and procedure on that which is relevant to the issue.

On January 27, 2017, then 81-year-old Jessie Kuss² and her husband, Arthur, were leaving a theater in Bakersfield after seeing a play. They were heading to their car between 9:30 p.m. and 10:00 p.m. Their car was parked on the street. As they neared the car, Arthur took Jessie's hand to help her step down from the sidewalk.

As Arthur was holding Jessie's hand, a man came up behind Jessie and "took my other hand, [and] pulled me back." Jessie stated the man "jerked me down to the sidewalk." She testified she "hit my bottom, my butt and my head, and my purse was taken." Jessie had been holding her purse in her other hand. Jessie testified the man had her other hand and "was yanking my purse and me to the ground to the sidewalk." She tried to hold on to her purse. After grabbing her purse, the man ran away "real fast."

When Jessie was jerked down to the sidewalk, she was injured. Jessie testified her "bottom was hurt so bad I could hardly walk for several weeks. And my head was hit, I was bleeding from my head." She had difficulty walking for seven or eight weeks.

¹ References to code sections are to the Penal Code.

² We refer to Jessie and Arthur Kuss by their first names to avoid confusion to the reader.

Jessie was transported to the hospital by ambulance. A police officer and ambulance personnel assisted her in getting into the ambulance. At the hospital, a staple was placed in the laceration on her head “to stop the bleeding.”

Arthur testified it was an African-American male that was grabbing Jessie’s purse. The man was wearing a dark hoodie, white trousers, and red shoes. The man was shorter than Arthur, who is six feet tall. Arthur estimated the man to be about five feet six inches tall and in his early twenties.

When the man fled the scene, he ran “right by” Randy Bennett. As the man passed Bennett, one of his shoes came off. Bennett picked it up and turned it over to the police. The shoe was a red “sneaker.” The man also dropped some mail he had been holding as he fled.

Bakersfield Police Officer David Hamma responded to the scene of the robbery. Bennett contacted Hamma and handed him the shoe. The other shoe was found in a dumpster about one block from the theater.

Hamma went to a nearby gas station and gave the description of the assailant to the store manager, who indicated a person matching the description had been in the store. Police obtained video surveillance footage from the gas station, which showed Brooks in the gas station market buying an iced tea at 10:37 p.m. the evening of the robbery.

On February 7, 2017, Bakersfield Police Officer Michael Ko contacted Brooks. After advising Brooks of his *Miranda*³ rights, Ko showed Brooks still photographs taken from the video surveillance camera at the gas station. Brooks admitted it was him in the photos. When asked what happened to the clothing he was wearing in the photos, Brooks responded, “I don’t know.”

Later that day, Arthur was shown a “six pack” photo lineup; he did not identify Brooks. Instead, Arthur narrowed the selection to two other people. Police then showed

³ *Miranda v. Arizona* (1966) 384 U.S. 436.

Arthur the still photos from the video surveillance and Arthur stated the man in the photos was dressed consistently with the man who robbed Jessie.

A witness, Cassie Cross, was shown the same photo lineup as Arthur; she identified someone other than Brooks. When police showed her the photos from the surveillance camera, she identified the man in the photos as the man who robbed Jessie.

Police obtained a search warrant to perform a buccal swab to get a sample of Brooks's DNA. Brooks refused to allow police to perform the swab. Police obtained another warrant which permitted them to use reasonable force to obtain the buccal swab. When police explained the terms of the second warrant to Brooks, he allowed them to perform the buccal swab.

Both shoes found near the scene of the robbery were tested for DNA. For the right shoe, there appeared to be four contributors to the DNA profile; Brooks could not be excluded as one of the contributors. The DNA profile on the left shoe also was a mixture and Brooks could not be excluded as a contributor.

The statistical calculation for the right shoe found that Brooks was 3.1 quadrillion times more likely to have been a contributor to the profile than a random person from the African-American population; 5.7 quadrillion times more likely than a person from the Caucasian population; and 1.7 quadrillion times more likely than a person from the Hispanic population.

Brooks testified in his own defense and admitted prior convictions for first degree burglary and felony vandalism. At the time of the robbery, he testified he was homeless and got clothing from donations or friends; he sometimes shared clothing with other people. He denied any involvement in the robbery and denied that the red shoes were his.

The jury convicted Brooks of all charges and found the section 12022.7, subdivision (c) enhancement true. At a bifurcated court trial, the trial court found the prior conviction allegations true.

On February 22, 2018, the trial court sentenced Brooks to a total term of 20 years in prison, calculated as 10 years for the robbery conviction; five years for the section 12022.7, subdivision (c) enhancement; and five years for the section 667, subdivision (a) enhancement. The term for the section 368, subdivision (b)(1) elder abuse conviction was stayed pursuant to section 654. Total credits of 303 days were awarded.

Brooks filed a timely notice of appeal on March 5, 2018.

DISCUSSION

Brooks contends his felony elder abuse conviction must be reversed because the evidence fails to establish that he willfully inflicted physical pain or mental suffering on the victim. We disagree.

Substantial Evidence Standard of Review

“In evaluating a claim regarding the sufficiency of the evidence, we review the record ‘in the light most favorable to the judgment below to determine whether it discloses substantial evidence—that is, evidence which is reasonable, credible, and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.’ ” (*People v. Westerfield* (2019) 6 Cal.5th 632, 713.) “ ‘The standard of review is the same in cases in which the prosecution relies mainly on circumstantial evidence.’ [Citations.] ‘We presume in support of the judgment the existence of every fact the trier of fact reasonably could infer from the evidence. [Citation.] If the circumstances reasonably justify the trier of fact’s findings, reversal of the judgment is not warranted simply because the circumstances might also reasonably be reconciled with a contrary finding.’ ” (*Ibid.*)

Elder Abuse

Section 368, subdivision (b)(1) penalizes any “person who knows or reasonably should know that a person is an elder or dependent adult and who, under circumstances likely to produce great bodily harm or death, willfully causes or permits any elder or

dependent adult to suffer, or inflicts thereon unjustifiable physical pain or mental suffering.”

A conviction for felony elder abuse requires proof of the following elements: (1) the defendant willfully causes or permits any elder adult to suffer unjustifiable physical pain or mental suffering; (2) the defendant’s conduct occurs under conditions likely to produce great bodily harm or death; and (3) the defendant knows or reasonably should know the person is an elder adult. (§ 368, subd. (b)(1); *People v. Racy* (2007) 148 Cal.App.4th 1327, 1334–1335 (*Racy*).)

Willfully

Brooks challenges that element of the offense that requires he “willfully cause[d]” the victim to suffer physical pain. Brooks appears to maintain that he did not act willfully because “Jessie lost her footing and fell after [he] grabbed her purse.” Brooks misconstrues the term “willfully.”

CALCRIM No. 830 instructed the jury on elder abuse. The instruction defines “willfully” as follows: “Someone commits an act willfully when he or she does it willingly or on purpose.” The definition of willfully in CALCRIM No. 830 is consistent with the definition of the word set forth in section 7. Section 7, subdivision (1) defines “ ‘willfully,’ when applied to the intent with which an act is done or omitted, implies simply a purpose or willingness to commit the act, or make the omission referred to. It does not require any intent to violate law, or to injure another, or to acquire any advantage.”

In *People v. Valdez* (2002) 27 Cal.4th 778, the Supreme Court addressed section 273a, subdivision (a), which defined felony child abuse as “ ‘willfully causes or permits that child to be placed in a situation where his or her person or health is endangered.’ ” (*Valdez*, at p. 787.) After noting that section 368 was “patterned on and virtually identical to” section 273a, subdivision (a), the *Valdez* court noted that to act

willfully did not require a defendant to have a “subjective awareness of the risk.” (*Valdez*, at pp. 785, 790.)

The appellate court in *People v. Thiel* (2016) 5 Cal.App.5th 1201 (*Thiel*) addressed section 368, subdivision (b)(1). The *Thiel* court concluded elder abuse likely to produce great bodily harm is a general intent crime. (*Thiel*, at p. 1213.) “ ‘General criminal intent thus requires no further mental state beyond willing commission of the act proscribed by law.’ ” (*Id.* at p. 1209.) A jury must find only that the defendant intended to commit the act that led to the elder adult suffering physical pain; a defendant need not act with the intent of inflicting physical pain. (*Id.* at p. 1215.)

Here, Brooks intentionally and willfully engaged in the criminal act that led to Jessie’s injuries; he intended to steal Jessie’s purse; grabbed her purse and “was yanking my purse and me to the ground to the sidewalk.” She tried to hold on to her purse. Jessie was injured as a direct result of Brooks’s criminal act in grabbing Jessie’s purse, thus causing an elderly woman to fall to the concrete sidewalk and suffer injuries. Elder abuse under section 368, subdivision (b)(1) is a general intent crime; there is no requirement that Brooks have intended to cause Jessie injury when he grabbed her purse and pulled; he need only have intended to grab the purse and pull. (§ 7, subd. (1); *Thiel, supra*, 5 Cal.App.5th at p. 1209.)

Neither *Thiel* nor *Racy* support Brooks’s position. *Thiel* did not establish a minimum level of conduct that had to occur in order to find liability; it addressed the intent requirement of willfulness. (*Thiel, supra*, 5 Cal.App.5th at pp. 1215–1216.) *Racy* does not address intent. In *Racy*, the defendant argued expert testimony was necessary to establish that use of a stun gun on an elder adult could lead to great bodily harm or death. (*Racy, supra*, 148 Cal.App.4th at p. 1332.)

Brooks intentionally committed the criminal act of grabbing Jessie’s purse and pulling her to the ground, thus causing Jessie’s injuries. Brooks willingly committed the criminal act proscribed by law and this satisfies the general criminal intent requirement

for willfulness set forth in section 368, subdivision (b)(1). (*Thiel, supra*, 5 Cal.App.5th at pp. 1209, 1213, 1215–1216.)

DISPOSITION

The judgment is affirmed.